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CURRENT TOPICS

The American Bar Association at Westminster

THE tremendously impressive assembly of judges headed by the Lord Chancellor (the Rt. Hon. Viscount KILMUIR, G.C.V.O.) in Westminster Hall was the first great highlight of this year's assembly of the American Bar Association. Those delegates who were fortunate enough to be present (the remainder saw the ceremony on television at a cinema specially lent for the occasion) were all in enthusiastic agreement as to the majesty and significance of the occasion. It was well known seemingly to them all—whether they came from Florida or Idaho, New Hampshire or California—that the ancient hall had once contained the old courts of King's Bench Common Pleas and the Court of Chancery and that no more suitable place could be chosen for a welcome from the lawyers of Britain to those of the United States. The ceremony was perfectly managed. The slow procession of the puisne judges into the hall down the steps leading from St. Stephen's, followed by the President of the Probate, Divorce and Admiralty Division (Lord MERRIMAN), the Master of the Rolls (Lord EVERSHED) and the Lord Chief Justice (Lord GODDARD), culminated in the stately entrance of the Lord Chancellor on the stroke of the appointed hour. The whole ceremony created a very deep impression upon the visitors. They were deeply moved by it and the impression has lasted throughout what will be regarded as an exceptional and historic annual assembly of this vast professional body representing a quarter of a million lawyers.

The City's Welcome

THE City of London's own welcome to the American Bar Association took place in ideal circumstances. The section of the assembly which is making a special study of Insurance, Negligence and Compensation Law met in the Grocers' Hall in the very heart of the City. And there the Lord Mayor (Sir CULLUM WELCH) went in state to give a welcome to the Association. It is well known that the Lord Mayor is himself a practising solicitor: so it was not surprising that he began his speech of welcome by pointing out that he spoke in the double capacity of first magistrate of the City and as a practising solicitor. He pictured the merchants and lawyers of past years strolling in the garden of the Hall—a plot of it was sold on which to build the Bank of England—talking of general average and freightage while they gathered the figs and grapes from the vines! It was an altogether fervid welcome and after he had withdrawn in state with the City Solicitor (Mr. DESMOND HEAP) immediately behind the Lord Mayor, the meeting heard

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an excellent survey of British industry and commerce by Lord KNOLLYS, chairman of Vickers, Ltd., followed by a speech by Sir WILLIAM CHARLES CROCKER on "A Solicitor *re* Insurance Adventures and Perils," a subject on which he is an undoubted authority. By the tone of their comments it was clear that the corporation lawyers of America attending the function were delighted with their welcome, the attractive surroundings of the Hall (the plate was on display) and the great interest of the subjects chosen for discussion.

At Runnymede

ONE of the most striking events of our American friends' visit was the unveiling by the Hon. DAVID F. MAXWELL on Sunday at Runnymede of the memorial to the signing of Magna Carta, which the American Bar Association have presented to the nation. Before a gathering of about 4,000 people Mr. CHARLES S. RHYNE, chairman of the House of Delegates of the Association, formally presented the memorial, declaring before the world that the ceremony encompassed not merely the dedication of a monument but also the rededication of the people of two great nations to the principles which had made and kept them free. LORD EVERSHED, replying, said that in making this gift the American Bar had laid a solemn charge upon them all to pledge to each other their lives, their fortunes and their sacred honour for the support of the principles for which the Great Charter stands. On behalf of the legal profession, Sir HARTLEY SHAWCROSS thanked the Association for their generosity and the spirit which had moved them to present the memorial. The best way to commemorate Magna Carta, he said, was to look to the future and to see to it that the great human values of which Magna Carta had become the symbol were protected and promoted in the world in which we live.

The Law Society's Reception

THERE have been scores of receptions held for the delegates of the American Bar Association, but special mention should be made of one of the first and biggest of them, namely, that held by the President of The Law Society (Mr. I. D. YEAMAN) in the Law Society's Hall. The President and Mrs. YEAMAN and the Vice-President (Mr. LESLIE PEPPIATT, M.C.) and Mrs. PEPPIATT received the guests on the stairway, and the three main rooms, the hall, the common room and library were soon crowded with guests. Among those present were the LORD CHANCELLOR and Lady KILMUIR, Sir CHARLES NORTON, M.C., Sir EDWIN HERBERT and many other very well-known solicitors and their wives. And also present was the indefatigable Secretary of The Law Society upon whom so much of the burden of the organisation of the conference has lain. The guests particularly admired the library and the hall with its pictures and stained glass. There were no formalities at all; it was just a get-together at the outset of the conference which was enthusiastically enjoyed by the Americans—some of whom were surprised that Englishmen and women and lawyers at that could unbend so easily and completely.

A Crowded Week

As we write, this epic week of festivities and social occasions is about to be brought to a close with the culminating dinner at Guildhall given by The Law Society. A tremendous programme has been carried through, in which THE SOLICITORS' JOURNAL was proud to take a modest part by way of a reception for some eighty of our visitors, given by the Editor and Proprietors at The Law Society's Hall on 29th July, at which many friendships were made. International visits are sometimes heavy going, however warm the heart. If we may be permitted a blinding flash of the obvious, the week has shown that in spite of the jibe that the Americans and ourselves are two nations divided by a common language, we can yet carry on a conversation. The tumult of discussion at The Law Society's Hall on Monday testified to the value of a common language from East Anglia to San Francisco, even if the same words do not always mean the same thing.

Postscript: Behind the Scenes

A SPECIAL Press summons to the Manhattan Room of the Savoy Hotel—the official London headquarters of the American Bar Association—enabled some correspondents to witness a particularly touching and completely unrehearsed incident in the events of the week. The President of The Law Society (Mr. I. D. YEAMAN) and the President of the American Bar Association (the Hon. DAVID F. MAXWELL) visited the headquarters to say a special word of thanks to the staff of The Law Society operating the headquarters. The President spoke of the utter devotion to duty of the staff in keeping at their tasks during and no doubt after the conference, often against the inclination of their own personal wishes. "After this," he proudly said, "there is nothing The Law Society cannot tackle." This was felt by all to be no exaggeration but a truth forced on all observers by what has been seen and expressed throughout the conference. The American host also expressed his greatest thanks and said all the delegates had been deeply impressed by the way in which all the arrangements had been personally handled. He voiced the thanks of all the delegates to all the serving staff.

Publicity and Modern Trials

THE legal professions of both the U.S.A. and this country have learned much from the interchange of views of the American Bar Association's conference, as we shall hope to show in later issues. As a topical example, the Americans have learned from a paper by LORD MILNER of a strong body of opinion here that chambers applications should not be *in camera*, and from a joint paper by LORD MILNER and Mr. BERNARD MACKENNA, Q.C., of a proposed solution to the problem of publicity for preliminary hearings of charges before magistrates, embodied in a recent Northern Ireland Act, which provided that in the preliminary investigation of an indictable offence the prosecution's opening statement should not be published, and empowered the court to direct that evidence should not be published if objection was made in good faith to its admissibility or if for any other reason the court thought its publication would prejudice the trial. On the other hand, English lawyers learned from a paper by Mr. ELISHA HANSON, general counsel to the American Newspaper Publishers' Association, that the problem in the U.S.A. was not how to suppress, but how to facilitate publicity, and that in numerous state courts photographing, broadcasting and television of trials had been permitted. He had been unable to locate a single case where the defendant, granted a new trial because of adverse publicity, had escaped conviction at his new trial.

COVENANTS IN AID OF CHARITY

In recent years, "seven-year covenants" have become a familiar means of inducing subscriptions to charities since, under them, a charity may be benefited to a greater extent than is implicit in the subscriber's actual payment.

A covenant under seal places the covenantor under a legal obligation to make annual payments to the charity. These payments are made out of the subscriber's taxed income and are declared to be so made in the covenant. The covenantor furnishes to the charity certificates of deduction of tax in the usual form, and the charity then reclaims tax at the standard rate on the annual payments which, by being grossed up to their full amount, are almost doubled in value.

Exemption from tax

The legal machinery by which this result is brought about is contained in s. 392 and s. 447 (1) (*b*) of the Income Tax Act, 1952. Section 447 (1) provides that exemption shall be granted . . . (*b*) from tax chargeable under Schedule D in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament (etc.), are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only.

Charitable purposes

In the well-known case of *Income Tax Special Purposes Commissioners* v. *Pemsel* [1891] A.C. 531, at p. 580 (H.L.) the purposes which the law considers to be charitable were grouped under four heads. They are: (i) the relief of poverty; (ii) the advancement of education; (iii) the advancement of religion; and (iv) other purposes of a charitable nature beneficial to the community, not falling under any of the preceding heads. The overriding test in determining whether an object is charitable is whether or not it is for the public benefit (*National Anti-vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31, at p. 64 (H.L.)). Public benefit means benefit of the community at large or an appreciably important class of the community (*Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* [1951] A.C. 297, at p. 305 (H.L.)), and not merely particular individuals or a small private class. Accordingly, various professional bodies have been held not to be charitable.

For income tax purposes "charity" means any body of persons or trust established for charitable purposes only (Income Tax Act, 1952, s. 448 (3)). It does not include casual almsgiving or charity which is not protected by a trust of a permanent character (*Income Tax Special Purposes Commissioners* v. *Pemsel, supra*), though it may be established without a trust deed. Whether a body is established for charitable purposes is a question of law (*Royal Choral Society* v. *Inland Revenue Commissioners* [1943] 2 All E.R. 101 (C.A.); 87 Sol. J. 336); whether or to what extent income is applied to charitable purposes is a question of fact (*Williams' Trustees* v. *Inland Revenue Commissioners* [1947] A.C. 447 (H.L.)).

Seven-year covenants

Section 392 of the Income Tax Act, 1952, provides that any disposition of income (other than a disposition for valuable and sufficient consideration) made, directly or indirectly, by any person after 1st May, 1922, which is payable to or applicable for the benefit of any other person for a period which cannot exceed six years, shall be deemed for all purposes of the Act of 1952 to be the income of the person, if living, by whom the disposition was made, and not to be the income of any other person. Accordingly, a six-year covenant is caught by the section whereas a seven-year covenant is not; but since a disposition is not within the section merely because the covenant comes to an end within six years (*Inland Revenue Commissioners* v. *Black* [1940] 4 All E.R. 445 (C.A.)), a covenant for seven years or prior death is outside the section.

Annual payments

Were it not for the exemption in favour of charities contained in s. 447 (1) (*b*) of the Income Tax Act, 1952, annual payments to charities would normally be taxable under Case III of Schedule D in s. 123 of the Act. Case III refers to (*a*) . . . any annuity, or other annual payment . . . either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract.

But the fact that a charity is recognised as such by the Commissioners of Inland Revenue is not conclusive of the case in favour of its exemption from tax (*Inland Revenue Commissioners* v. *City of London Corporation* [1953] 1 All E.R. 1075 (H.L.); 97 Sol. J. 315), for not every payment made annually is an annual payment under Case III. The charging words of the case imply that there must be a legal obligation to make the payment and a legal right on the part of the recipient to receive it.

"Pure income profit"

The payments should, further, have the quality of recurrence, and should also constitute what Lord Greene, M.R., in *Re Hanbury; Coniskey* v. *Hanbury* (1939), 20 A.T.C. 333 (C.A.) called "pure income profit" (and also "pure profit income") in the hands of the recipient, as opposed to payments which are taken into account in calculating the recipient's profits. Consequently, a yearly payment made to a tradesman for supplies or services, though it possesses all the other characteristics of an annual payment, would not fall within Case III. To do so, it should be a payment "without conditions or counter-stipulations" (*per* Lord Normand in *Inland Revenue Commissioners* v. *City of London Corporation, supra*, at p. 1085).

Inland Revenue Commissioners v. *National Book League*

In certain circumstances, this situation can cause trouble for a charity, and it did so in the recent case of *Inland Revenue Commissioners* v. *National Book League* [1957] 3 W.L.R. 222; *ante*, p. 553, which may well have wide repercussions. The league, a company limited by guarantee, was instituted for the purposes of promoting and encouraging the habit of reading and the wider distribution of books, and was accepted as a charity by the Inland Revenue Commissioners. A brochure issued by the league, of which a section was headed "Your Club," stated that the league's headquarters in London gave "the facilities of a club to members and their friends from many parts of the country and from overseas." These facilities included the use of a reading room, drawing room, library, and a licensed bar and restaurant, but there was no express obligation to maintain these facilities and they could be withdrawn at any time. In 1951, the league

passed a resolution to increase subscriptions, except in the case of members renewing their membership to 31st August, 1952, who entered into "deeds of covenant to remain members and to pay their annual subscriptions at the existing rates for at least seven years." The chairman addressed letters to members inviting them to enter into deeds of covenant and drawing attention to the advantages offered. Over two thousand members executed such deeds of covenant, and the league claimed to recover the tax deducted from the notional gross sums named in the deeds, as being annual payments within Case III of Schedule D in s. 123 (1) of the Income Tax Act, 1952, in respect of which the league was exempt from liability to tax as a charity under s. 447 (1) (*b*) of the Act.

The Crown contended that the deeds of covenant were entered into as the result of a contract between the league and each covenantor, whereby the league was obliged to afford to the covenantor all the advantages of membership which were offered at any particular time to every other member, and that the payments received by the league pursuant to the deeds were received in consideration of the annual provision by them of goods and services.

De minimis non curat lex

The Special Commissioners accepted evidence that very few members were influenced to any appreciable extent to become or to continue as members by the facilities offered, and that the amenities referred to were so trifling that on the principle *de minimis non curat lex* they ought to be disregarded, and that the claim of the league for exemption from tax should be allowed.

Vaisey, J., however, allowed an appeal by the Crown, holding that the covenantors received considerable advantages from their subscriptions, and that such advantages must have influenced persons in deciding whether to become or continue as members. Accordingly, it was very difficult to treat the payments under covenant as ordinary charitable subscriptions in which the whole amount of the payment went for the benefit of charity (49 R. & I.T. 768).

The league appealed and the Court of Appeal dismissed the appeal ([1957] 3 W.L.R. 222). Lord Evershed, M.R., said that whether particular advantages or promises could be dismissed on the principle of *de minimis non curat lex* must be a matter of law rather than of fact and he was unable to see any justification for the Special Commissioners' conclusion. Although there was no contractual promise on the part of the league to provide any particular amenities the covenantors had obtained two advantages: (i) they were able to continue as members at the lower subscription rates with the promise or assurance that their subscriptions would not be raised during the seven-year period; and (ii) they had the advantage, whilst paying the lower rates, of enjoying the same amenities as those who paid the greater rates.

"Conditions and counter-stipulations"

Against the special background of the case and the terms of the chairman's letter, it could not be said that the payments under covenant had been made without conditions or counter-stipulations. Not all privileges, however, created conditions or counter-stipulations. In the case of a certain fund (which had been instanced in argument) covenantors might be allowed the use of reading rooms and given the privilege of attending exhibitions in private houses and elsewhere, but it seemed that it would altogether offend good sense and good law to say that the sums covenanted in such cases were not gifts to charity—that they were not "pure income" in the hands of the charity. The test was whether in all the circumstances the covenantors could be treated as donors of the covenanted sums to the charity.

It is submitted, however, that the test stated by Lord Evershed is only relevant in determining the *nature* of the annual payments in the hands of the recipients, since it is that which ultimately decides their eligibility for tax exemption. If they are not made without "conditions or counter-stipulations," or represent payment for goods or services, or the consideration for advantages, privileges, or amenities of a fairly appreciable character, then tax will be exigible.

The difficulty which will confront many charities and their advisers as a result of the Court of Appeal's decision will be to know how far they may go in offering inducements to prospective covenantors without placing the charity beyond the bounds of tax exemption.

K. B. E.

COMMISSIONERS FOR OATHS

On 3rd November last, "Ordinary Commissioner" writing in our columns suggested that many commissioners for oaths of the younger generation were not particularly familiar with their own powers, let alone that of notaries. The previous correspondence had been principally conducted by notaries, whose theme was that all documents from abroad were best sworn before, or witnessed by, a notary. In fact, many of the countries, States and provinces of the Commonwealth recognise a commissioner's signature without further authentication; and this being so, commissioners may be interested to know what they can and cannot do.

Under the Commissioners for Oaths Act, 1889, s. 1 (2), "A Commissioner may by virtue of his commission take any oath in England or elsewhere . . ." R.S.C., Ord. 38, r. 6, states that: "All affidavits declarations attestations depending in the High Court may be sworn and taken in . . . any place under the Dominion of Her Majesty before . . . any person authorised to administer Oaths in such country or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's Dominions; and the Judges . . . of the High Court shall take judicial notice of the seal and signature." Further, the 1889 Act, s. 3 (1), states: "Any Oath or Affidavit for the purpose of any Court in England . . . may be taken or made in any place out of England before any person having authority to administer an Oath *in that place*." There thus seems to be a discrepancy between s. 1 of the Act and the Rule, for example, in the case of an English commissioner taking oaths for use in this country while he is on holiday in Switzerland. However, it is understood to be the practice that the Central Office will accept an affidavit sworn before an English commissioner in such circumstances.

So far as the various parts of Her Majesty's Dominions are concerned, the commissioner's signature will be acted upon without further authentication in Guernsey; but not in Jersey, unless going before a notary would impose serious travelling hardship on the person wishing to swear. The signature will be accepted in the Isle of Man. All Australian States except New South Wales recognise the commissioner's

signature. The Evidence Act of Victoria (No. 3674 of 1928), ss. 49 and 116 (1), respectively, provide that: "Every document . . . admissible in evidence of any particular in any Court of Justice in England . . . without proof . . . of the signature authenticating the same or of the judicial or official character of the person appearing to have signed the same shall be admissible in evidence to the same extent," and: "All acts matters or things which in Victoria or elsewhere a Notary Public can attest or verify or otherwise do . . . may be taken or done out of Victoria (*c*) before any person having authority to administer an Oath in that place." It is in this pattern that most of the Commonwealth Legislatures have cast their laws where these recognise English commissioners.

In Canada, English commissioners are recognised in Alberta, British Columbia, Newfoundland, Nova Scotia, Ontario and Saskatchewan; but not in Manitoba or Quebec. Remaining in the New World, the Bahamas, Barbados, Dominica, the Leeward Islands, Trinidad and Tobago and the Falkland Islands recognise them; Bermuda, British Honduras and British Guiana do not. India and Pakistan (Evidence Act, 1872) and Ceylon recognise commissioners' signatures, though in these countries the ambiguity of the Imperial Parliament and Rules of the Supreme Court is perpetuated, for it is enacted also that the "Court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public or any Court, Judge, Magistrate" (not an ordinary English magistrate) "British Consul or Vice-Consul or representative of Her Majesty or of the Central Government was so executed or authenticated"—nothing about other authorised persons such as commissioners for oaths.

New Zealand (and by reference Western Samoa) has a curious provision, for while not recognising commissioners it will recognise a "document executed in any Commonwealth country if executed in the manner (if any) prescribed by the law of that country for the verification of documents to be executed abroad." In theory, at least, this appears to suggest that the New Zealand courts take judicial notice of all Commonwealth legal systems, quite apart from problems of *renvoi* that this legislation could introduce.

The other Commonwealth countries who recognise commissioners' signatures are Gibraltar, Cyprus, Ghana, Sierra Leone, Malaya, Hong Kong, Sarawak, Somaliland and Fiji; and a few others will, except on powers of attorney. In general, it may still be said that a notary's signature is best. While commissioners are frequently asked to sign (and do in fact sign) all documents put before them, they should do so with caution bearing in mind that their signatures may be valueless to their client; at the same time they have no reason to refuse outright purely because there appears to be a foreign element. In cases of doubt the provisions of most foreign laws can readily be found in The Law Society's Library, and in any case the nearest notary will be very willing to help.

N. P.

THE NEW STREETS ACT, 1951 (AMENDMENT) ACT, 1957

THIS "tidying-up" statute was passed on 6th June, 1957, but will not become law until 6th September, 1957 (s. 8 (3)); in the meantime it is important that the many detailed ways in which it alters the 1951 Act, whilst preserving the main scheme thereof, should be appreciated. In this commentary on the new Act, we are proposing to summarise the principal Act, that of 1951, and show how its several provisions have been amended or extended.

It will be remembered that the 1951 Act provides (in s. 1) that in any case where plans have to be submitted for the erection of a building under the building byelaws, and the proposed building will have a frontage to a "private street" (and the definition of this expression is widened to include land shown as a street on a planning application: 1957 Act, s. 6 (8)), no work may be done in or for the purpose of erecting the building unless the owner of the land has paid to, or secured to the satisfaction of, the local authority a sum specified by the authority in anticipation of the estimated private street works expenses in that street, apportioned to that particular piece of land.

In certain circumstances, this provision does not apply—some of the exemptions apply automatically, as where the plans are deposited prior to 3rd July, 1951, or where an agreement for making up the street has been entered into under s. 146 of the Public Health Act, 1875, and in other cases the exemption applies only where the local authority exercise the discretion given to them by the section in that behalf, as where they are satisfied (and the section is amended here by the 1957 Act) that "the street is not and is not likely within a reasonable time to be, substantially built up or in so unsatisfactory a condition as to justify the use of powers under the appropriate private street works code," and so exempt the building from the section by notice in writing (1951 Act, s. 1 (3) (*e*)). The discretionary exemptions are added to by s. 6 (1) of the 1957 Act, whereby a street (not just a particular building) may be exempted by resolution (not "by notice") if the authority are satisfied—

> "(i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises [an expression defined by reference to the Distribution of Industry Act, 1945], and
>
> (ii) that their powers under the appropriate private street works code are not likely to be exercised in relation to the street, or to that part thereof, as the case may be, within a reasonable time."

Registration

Section 4 of the 1957 Act makes notices served under s. 2 of the 1951 Act registrable in the local land charges register (normally that maintained by the district council, unless the county council are the private street works authority), and also made registrable are payments made and securities given under s. 1, exemption notices or resolutions under the same section (as amended), and refunds of payments or releases of securities. Registration is to be effected of all such matters, whether occurring before or after the passing of the Act,

and therefore local registrars will have to clear a few arrears by way of effecting registrations, before the Act comes into effect. The provision will be of considerable importance to purchasers, in that they will be assured of obtaining the complete picture of the effect of the 1951 Act on the particular property, without having to make special enquiries of the local authority. Rules giving effect to s. 4 have yet to be made, but presumably these matters will be made registrable in Pt. IV of the registers.

The remainder of the complicated provisions of the 1957 Act is concerned with refunds and releases of payments and securities, and other less important amendments of the principal Act.

Refund of payment or release of security

Section 1 (of the new Act) provides for cases where a street is made up to the satisfaction of the local authority but otherwise than at their expense (e.g., by the building estate developers), and in such a case any payment made or security given may be refunded or released by the local authority to the person at whose expense the works are carried out—the refund or release being effected to the amount by which the owner has been relieved of liability for private street works expenses. Thus, if the builders construct an adequate carriageway, but do not put in any footpath or surface water drainage for the street, sufficient of the payment or security will be retained by the local authority to cover such works at some future date. If the person who has incurred the expense of the street works is not the owner of the land, the owner must first be notified of the proposal to make the refund (or release), and afforded an opportunity of making representations to the local authority. Such an owner has no further remedy however if his representations are not accepted by the local authority. Provision is made in subs. (2) of this section for apportionment where a particular parcel of land is divided between two or more owners.

A refund or release must be made (1957 Act, s. 6 (1)) where a resolution is passed by the local authority exempting a street or part of a street from the section under s. 1 (3) (*k*) (added by s. 6 (1) of the 1957 Act, above), which affects a building in respect of which a payment has been made or security given under s. 1 of the principal Act. This is the only case where an "exemption decision" of the local authority can have retrospective effect in this way, as in all the other discretionary cases the local authority can act only in relation to each particular building as the plans are submitted on each occasion (see 1951 Act, s. 1 (3) (*e*), (*f*) and (*h*)).

In other cases where the local authority have otherwise no power to make a refund or release of a security they may, by further notice served on the owner for the time being, substitute a smaller sum for that previously specified in their s. 2 notice, or intimate that no sum at all is payable (see s. 2 (3) of the 1951 Act, as substituted by s. 6 (2) of the 1957 Act, thereby making it clear that the sum originally specified may be reduced to *nil*, and that the variation notice must be served on the owner for the time being, who is not necessarily the "same person" as the one on whom the original s. 2 notice was served). In any such case a refund of payment or release of security must be made *pro tanto*, and provision is also made for apportionment (1951 Act, s. 2 (5), added by 1957 Act, s. 6 (2) (*c*)). Section 2 (4) is also amended (s. 6 (2) (*b*) of the 1957 Act), to make it clear that it is the owner of the land on which the building is erected, as well as the person served with a variation notice, who may appeal to the Minister. These provisions are also important in that they make clear that when property has changed hands after a payment has been made or security given, and some refund or release falls to be made, any outstanding balance of such payment or security is to be dealt with as provided for in s. 3(1) of the 1951 Act: s. 3 (2), *ibid.*, substituted by s. 6 (3) of the 1957 Act.

Interest payable

Section 3 (2) originally required an interest of 3 per cent. to be paid by a local authority on payments made under s. 1 until the street is adopted as repairable by the inhabitants at large; now, by s. 5 of the 1957 Act, interest is payable until the sum paid falls to be set off against the liability of the owner of the land in respect of the carrying out of private street works (i.e., normally, when a demand is served consequent on the making of a final apportionment), or when it falls to be refunded in full under the Acts. Moreover, the rate of interest is to be tied to the rate charged by H.M. Treasury in respect of loans made to local authorities for periods of ten years; this rate stands at present at 6 per cent. (see Treasury Minute: S.I. 1957 No. 1237).

Adoption of street

Where a payment has been made or a security given under s. 1 of the 1951 Act, and *any* (not necessarily *all*) street works are subsequently carried out in respect of that frontage, the local authority may, by notice fixed up in the street, declare the whole street or any part thereof in which any of the street works were carried out to be a highway repairable by the inhabitants at large (1957 Act, s. 2). This power is in addition to, being wider than, the powers given by s. 19 of the Private Street Works Act, 1892, s. 152 of the Public Health Act,1875, or s. 41 of the Public Health Acts Amendment Act, 1890.

Agreement for making-up of street

By s. 3 of the 1957 Act it is made clear that the fact that a payment has been made or a security has been given under s. 1 of the 1951 Act, in respect of some parcel of land in a particular street, does not affect the powers of the local authority to enter into an agreement for the making up of the street under s. 146 of the Public Health Act, 1875, and in such an agreement the authority may provide for a refund of the sum paid or a release of a security given (or part thereof).

Information as to ownership

Section 6 (6) of the new Act gives a local authority power to require information to be given as to the ownership of premises, applying s. 277 of the Public Health Act, 1936, and s. 9 (2) of the 1951 Act is amended, so that the Act may be applied by Ministerial order made on the application of the county council, to a "contributory place" within a rural district, and not necessarily to the whole of the rural district. This does not mean, however, that purchasers are put on enquiry (as they would have been hitherto) as to whether the Acts apply in any particular rural district or contributory place, as any relevant action that may have been taken in respect of the street will in future be disclosed in the local land charges register, pursuant to s. 4 of the new Act, *supra*.

J. F. GARNER.

Common Law Commentary

INAPT TERMS IN CONTRACTS

AN interesting sidelight on the attitude of the business man to the law is provided by the decision of the Court of Appeal in *Anglo-Saxon Petroleum Co., Ltd.* v. *Adamastos Shipping Co., Ltd.* [1957] 2 W.L.R. 968; *ante*, p. 405. It is a case concerning shipping: a mysterious branch of the law to many a lawyer, but one which, he may be reassured, is governed by many a common-law principle. It is a case where a printed form of contract was used, but the parties attached to it a printed slip for the purpose of modifying the original printed form.

The contract was a contract of charterparty, i.e., for the hire of a ship. The printed slip, however, was a paper containing clauses designed to exempt certain parties from liability, but one which was designed for a bill of lading. A bill of lading is not a charterparty. What is more, the clauses in the slip were taken from the United States Carriage of Goods by Sea Act of 1936 (giving effect to the Hague Rules). This Act expressly provided that its provisions should *not* be applicable to charterparties.

Here is a nice little problem in construction: shall one ignore the provision in the Act expressly stating that it is not to apply to charterparties (on the basis that the parties wished to apply its provisions to a charterparty and one ought to give effect to the intentions of the parties), or shall one ignore the printed slip altogether on the basis that the parties had produced something which was nonsense and so incongruous that it could not be supposed that the parties ever intended to produce such a hotchpot?

The decision at first instance

What happened was that the owners of the ship granted what was described as a "consecutive voyage charter," i.e., one in which the ship was to ply back and forth as often as possible over a period of eighteen months. Under the charterparty there were obligations which amounted to an obligation to have the ship seaworthy at the beginning of each successive voyage. Great difficulty was experienced by the owners in getting a suitable crew, and although they did their best in the matter, and several times made changes, including in one instance a complete change of the crew, nevertheless, for a great part of the time the ship was manned by incompetents whereby, for example, the machinery was damaged. In all, the charterers complained that they lost the services of the vessel for 106 days whereby they suffered £80,000 damages. Were the owners liable, or could they point to anything in the contract that exempted them?

All they could point to was the printed slip from the American statute which was meant to apply to bills of lading and which expressly stated that it did not apply to charterparties. It did contain certain exemptions which would have been of value to the owners. The dispute having gone to arbitration, the arbitrator stated some eleven points for the court. The case came before Devlin, J., who concluded that there were three points of law requiring consideration. The first of these was the question whether the American statute affected the rights and liabilities of the parties. His lordship decided that the statute did apply because the purpose of the court was to give effect to the intentions of commercial men; his lordship said that the section of the statute negativing its applicability to charterparties was insensible and should be rejected (see [1957] 2 W.L.R. 509; *ante*, p. 267).

The view of the Court of Appeal

This decision was taken to the Court of Appeal whose judgments, as noted above, are reported at [1957] 2 W.L.R. 968 and summarised at p. 405, *ante*. On this point the Court of Appeal reversed Devlin, J.

Denning, L.J. (as he then was), said: " It is useless to ask what was the intention of the parties because I do not suppose they brought their minds to bear on it at all. It looks as if they pulled a common form of paramount clause out of the drawer and pinned it to the charterparty without reading it. How otherwise can anyone explain the opening words, ' This bill of lading,' when it was not a bill of lading at all but a charterparty? "

His lordship added that he was quite certain that the parties had not read the United States statute otherwise they would have seen the provision that it was not to apply to charterparties, and went on: " What, I ask, is the use of incorporating into a charterparty an Act which says that it is not to apply to charterparties? It simply does not make sense."

The fact is that such paramount clauses often are attached to charterparties. Historically, the purpose was to make the owner liable, not to exempt him, but clauses of complete exemption grew into use, and the purpose of the Hague Rules was to prevent too wide exemptions. They do, however, exempt him so long as he uses due diligence in certain respects. The purpose of the paramount clause therefore is primarily to give the Hague Rules contractual force.

Since such clauses are often used the court felt that, notwithstanding what has been said above, they ought to endeavour to give it some force. Thus it cannot be said that the court were too ready to expunge the contractual efforts of business men notwithstanding that they acted blindly. But the results were too bizarre. Here are a few of them: (1) the American statute is limited to apply to contracts " for the carriage of goods by sea to or from ports of the U.S. in foreign trade." But this was a worldwide charterparty: it would be strange if the owners were not liable for negligence of the engine room staff from Baltimore to Curaçao, but liable on the voyage from Curaçao to Buenos Aires; (2) being designed for bills of lading, it was worded to apply only to cargo-carrying voyages, and this would have produced, on the facts, the opposite result from that in (1) whereby they were liable from Baltimore to Curaçao but not from Curaçao to Buenos Aires; (3) the exemption applied to " loss or damage " in relation to loading and handling of goods, and so was hardly applicable to loss of services as here claimed.

The point is not a novel one: there are several decisions dealing with contracts wherein the parties have inserted clauses which are too vague to be given effect to, or inconsistent with the rest of the document. One such case of fairly recent origin is *Nicolene, Ltd.* v. *Simmonds* [1953] 1 Q.B. 543; 2 W.L.R. 717. Broadly, there are two possibilities in such cases, either to declare the whole contract a nullity because the unsatisfactory clause deals with the main object of the parties, or to declare that the meaningless clause shall be struck out, leaving the rest of the contract binding. The current decision shows to what lengths the court will endeavour to go to avoid either of these if possible.

L. W. M.

Landlord and Tenant Notebook

POTENTIALLY LONG TENANCIES?

THE recently published Current Law Guide No. 13, its subject being the Rent Act, 1957, reveals the existence of an interesting difference of opinion between writers on such subjects. The writer of the guide diffidently joins issue with the editors of the Permanent Supplement to Woodfall's Law of Landlord and Tenant on the question whether the expression " long tenancy " in the Landlord and Tenant Act, 1954, s. 2, defined in subs. (4) as " a tenancy granted for a term of years certain exceeding twenty-one years . . ." covers a tenancy for over twenty-one years determinable by option before it has lasted that long. The section conferred special protection on tenants holding dwelling-houses under such tenancies when, by reason of the rent being less than two-thirds the rateable value, they were excluded from the protection of the principal Acts; s. 21 (1) of the Rent Act, 1957, has now decontrolled such tenancies, adding to the importance of the issue.

For the sake of convenience, I will describe the " Woodfall " editors' views by reference to the letter *W*, and those held by the author of the Rent Guide (Mr. Ashley Bramall) by reference to the letter *G*.

Case that option immaterial

According to *W*, once there has been a definite grant exceeding twenty-one years, the fact that the tenant has a right to determine it does not prevent it from ranking as a " long tenancy." A footnote says: " See *Quinlan* v. *Avis* (1933), 149 L.T. 214."

In the case cited, a landlord had sought to take advantage of a (since forgotten) provision contained in the Rent, etc., Restrictions Act, 1923, s. 2 (3), whereby if a landlord granted a valid lease of the dwelling-house " for a term ending at some date after 24th June, 1926, being *a term of not less than two years*," the dwelling-house became decontrolled. A Divisional court held that the fact that the instrument before it contained a tenant's option to determine at the end of the first year did not prevent the subsection from effecting decontrol.

Case against above

G's comment is that the wording of the Landlord and Tenant Act, 1954, s. 2 (4), differs from that of the Rent, etc., Restrictions Act, 1923, s. 2 (3), and that in *Quinlan* v. *Avis* the court appears to have been largely influenced by the intention of the provision: decontrol to be allowed provided the tenant had two years' security; he alone could have reduced the period.

Then, *G* contends, the Landlord and Tenant Act provision contains two words which must produce a different result: the tenancy must be *granted* for a term of years *certain*: it must be possible to say, at the time of the grant, whether or not the tenancy will last for more than twenty-one years. And two decisions under 1 Geo. 4, c. 87 (replaced by the Common Law Procedure Act, 1852), are cited: *Doe d. Cardigan* v. *Roe* (1822), 1 Dow. & Ry. 540, and *Doe d. Pemberton* v. *Roe* (1827), 7 B. & C. 2, in which, according to *G*, it was held that a lease for fourteen years determinable by the tenant after seven years, and a tenancy for ninety-nine years determinable on the dropping of three lives, were respectively held not to be within the scope of the words " term or number of years certain." The definition of " term of years absolute " in the Law of Property Act, 1925, s. 205 (1) (xxxvii): a term of years, either certain or liable to determination by notice, re-entry, operation of law, or by provision for cesser or redemption, or in any other event (other than the dropping of a life or the determination of a determinable life interest) . . ." is then referred to; this, it is said, appears to suggest a contrast between a term certain and a determinable term.

And the conclusion is, it is suggested with diffidence, that the use of the word " certain " requires that the term when granted must certainly be going to last for over twenty-one years for the exemption from the Rent Acts to apply.

Comment

I make my comments with deference as well as diffidence. I agree that *Quinlan* v. *Avis* does not support the view that the presence of a tenant's right to determine will not prevent it from being a Landlord and Tenant Act, 1954, " long tenancy." *W* was careful to refer to the decision by saying " See . . ."

Then, when drawing attention to the difference in language, *G* relies on two words in the 1954 enactment: " granted " and " certain." As the Rent, etc., Restrictions Act, 1923, s. 2 (2) runs: " . . . grants to the tenant a valid lease of the dwelling-house for a term ending at some date after 24th June, 1926, being a term of not less than two years," the difference appears to be exaggerated; but the Landlord and Tenant Act, 1954, s. 2 (4), does indeed, and the 1923 Act indeed did not, use the word " certain "; of which more later.

But if the criticism of introducing *Quinlan* v. *Avis* was based on the point that the 1923 Act was passed *alio intuitu*, how much stronger would be such criticism if directed against *G's* citation of authorities illustrating the scope of a statute which was concerned purely with procedure. The measure known as 1 Geo. 4, c. 87, was headed: " An Act for enabling landlords more speedily to recover possession of lands and tenements unlawfully held over by tenants "; landlords concerned were given the right to serve a demand and, after starting an action of ejectment, to move the court for a summons for the tenant to show cause why he should not enter into a recognizance in a reasonable sum conditioned to pay the plaintiff's costs and damages, etc.; failing which, the landlord concerned might sign judgment, etc. The Act applied, and the Common Law Procedure Act, 1852, s. 213, applies, " where the term or interest of any tenant . . . holding under a lease or agreement in writing . . . any lands, tenements or hereditaments for any *term or number of years certain*, or from year to year, shall have expired or been determined either by the landlord or tenant by regular notice to quit."

In *Doe d. Phillips* v. *Roe* (1822), 1 Dow. & Ry. K.B. 433, the procedure was held to be available to a landlord who had let, by a written agreement, for three months: this, it was held, was a term certain; any term whatever came within the statute; it would be monstrous if, because he had let for a quarter of a year, the landlord should be subject to the circuitous process, etc. This case is not mentioned by *G*. In *Doe d. Cardigan* v. *Roe*, *supra*, a tenant gave notice, apparently exercising an option, at some point in the course of a fourteen-year lease: it was held that the statute applied

only where the determination was by mere efflux of time. This does not, of course, imply that a fourteen years' term determinable at seven years is not a term or number of years certain ; the *ratio decidendi* was that the Act did not avail a landlord if determination were effected by exercising an option. But *Doe d. Pemberton* v. *Roe* is, I agree, more in point ; the lease, granted in 1762 for ninety-nine years if, etc., should so long live, was held to be outside the scope of the Act because it might terminate on the death of an individual and was therefore one not held for any term or number of years certain.

The reference to part of the definition of " term of years absolute " is provocative. The emphasis, if the paragraph is read as a whole, appears to be on the " absolute," the definition being at pains to exclude terms of years determinable with life or lives, etc. ; but, admittedly, the part cited appears to contrast a term liable to determination by notice, by provision for cesser, with a term certain when making both varieties " absolute."

" Certain "

The position being what it is, it is, I submit, legitimate to inquire why the word " certain " occurs in the Landlord and Tenant Act, 1954, s. 2 (4), at all. Looking at the subsection as a whole, we find that " long tenancy " means " a tenancy granted for a term of years certain exceeding twenty-one years, whether or not subsequently extended by act of parties or by any enactment." This suggests that the function of the word " certain " was to stress the fact that, there being two kinds of tenancy, the fixed term kind, which determines without notice, and the periodic kind, " long tenancy " was to cover a tenancy created by holding over provided it followed (" subsequently ") a term exceeding twenty-one years.

It may be that one would normally speak of a lease for, say, fourteen years as a fourteen years' lease, though it contained an option to determine at the seventh year, whereas one would call a seven-year lease with an option to renew " a seven years' lease." In *Goodright d. Hall* v. *Richardson* (1789), 3 T.R. 462, the facts of which were rather out of the ordinary, Buller, J., actually said that " a term of three, six or nine years " was a " lease for nine years, determinable by either of the parties at, etc." But I agree that the use of the word " certain " should make a difference, and would regard this as *G's* strongest point ; briefly, while not accepting all his premises, I am inclined to consider his conclusion the correct one.

R. B.

HERE AND THERE

BETTER ALONE

EVERY relationship and pursuit has its appropriate number. For true lovers the number is two ; the triangle is fatal ; three is no company. For comradeship, by contrast, among boys or men, three is the classical figure, from the Three Musketeers to Kipling's Soldiers Three. Card players have no pleasure of an evening unless there are four of them to take the four sides of a bridge table. Certain sorts of music will demand the harmonious co-operation of two, three, four, five or six players. But there is a pursuit for which the ideal number is one, all alone, evermore, and that is the deliberate pursuit of crime. That way the artist in crime is not at the mercy of another man's failure in discretion, resolution or courage, where secrecy and boldness are of the essence of the enterprise. But if, by the nature of the work in hand, he cannot act alone, casual *ad hoc* allies are no use. Nothing will do but a group so close-knit that it acquires the unity of a single integrated, homogeneous personality. How aggravating, therefore, when, having duly observed these elementary requirements of criminal practice and procedure, one is forced into a chance, unplanned, unsolicited band of coadjutors. The story was told lately at the Old Bailey how early one morning two gangs converged simultaneously on the same safe, each innocently unaware of the other's designs. Gang No. 1, arriving first in the Fulham Road shop, took possession of the object of the exercise and possession is not less vital in lawlessness than in law. They had posted a sentry and were in the act of examining the half-ton monster which they were about to attack when two unfamiliar figures appeared in the doorway. " Cops " was their instinctive thought, but the newcomers, instead of advancing with the well-known assurance of representatives of the authority of the law, wavered and seemed equally taken aback. " Cops " was what they were thinking, too, when they saw the shop already occupied. A long whispered argument revealed the astonishing coincidence that Gang No. 2 was on the very same mission as Gang No. 1 and had made an entrance of such professionally accomplished stealth that it had all unknowingly eluded their look-out man.

DOUBLE TROUBLE

Now, a more embarrassing situation could hardly have arisen. It is a publishers' nightmare for two of them to bring out simultaneously two books on the same subject. Suppose that by some slip in a solicitor's office two barristers arrived simultaneously in the same court to defend the same party or that two surgeons complete with anæsthetists arrived at the same table to operate on the same patient, or that two complete companies arrived at the same theatre to play " Hamlet " on the same night. Yet in all these eventualities some professional or legal remedy could be found, as in the case of the two Kings of Barataria. But the two gangs facing each other in the darkened shop in Fulham Road had reached an *impasse*. They could not fight the thing out, for the noise would have brought the police up in good earnest. *A fortiori* they could not have adjourned the whole matter and applied to the court for injunctions. On that point, the *Highwaymen's Case* in the eighteenth century has long been a classic warning. The most terrible things happened to parties, solicitors and counsel when two highwaymen tried to bring before the Court of Chancery a dispute under their partnership agreement ingeniously disguised as an ordinary action. In that impossibly difficult situation, the Fulham Road safe busters did what the nations may yet bring themselves to do under the threat of nuclear fission : they agreed to peaceful co-existence, which in this case meant co-robbery, and made off jointly with the safe which turned out unexpectedly resistant to their arts. The joinder of their united forces proved a blessing in removing it from the premises to a secret garage workshop in Battersea. But there was no luck about that safe. The whole enterprise was haunted by hitches. The operation with an oxy-acetylene

burner broke down and it was decided to transfer the safe to another better equipped workshop. The removal was just getting under way when once more strangers appeared on the scene. Yet another gang? Not this time. It was the police at last. They made a haul of six. Never was a swifter dissolution of partnership. The recriminations started at once. " The squeal must have come from your side. I can trust my mob." " We were mugs to fall for your idea that night in the shop." The last scene of all was the Old Bailey, where the Common Sergeant sentenced the former partners to terms of imprisonment ranging from twelve to eighteen months. And as an additional touch of irony, they learnt that even if they had got inside the safe they would have found, not the £800 on which they had counted, but only £100, which, you all agree, would have produced a very poor dividend in terms of manhours, danger money and overheads. They might almost have done better if they had done a job of work. But then, as with the Bar, a terrible problem of overcrowding is now facing the criminal profession. The Metropolitan Police are alarmed at the increase of crime in London. But look at the cut-throat competition from the point of view of the unfortunate criminal. This story is only one illustration of the terrible consequences of too many thieves chasing too few safes.

RICHARD ROE.

RENT ACT PROBLEMS

WE print below a further selection of readers' queries arising under the Rent Act, 1957, and the replies given by our " Points in Practice " Department. We hope to publish further selections at frequent intervals. Readers are cordially invited to submit their problems to the " Points in Practice " Department, " The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 3—INCREASE OF RATES

Q. A house situate in the Midlands is let on a monthly contractual tenancy, present rent (including previous rate increases) £5 6s. 7d. per month payable on the 3rd of each month, the landlord paying general rate; gross assessment £40. The demand note for the rate has only just been received. Notice on Form A to increase the rent is about to be given. Can the increase in the rate from the commencement of the rating period, viz., 31st March, 1957, be included in the notice, the increase to be charged in respect of such rate to date from that day, and the increase in rent to date as to £1 10s. per month from three months after service of the notice and the balance of the permitted increase nine months after such service, or should Form B be used in respect of the increase of rate? Does the principle applicable to such a tenancy also apply to weekly controlled tenancies except that increase in respect of rates can only be demanded from a date six weeks prior to service of the notice? If Form B is used can it be served at the same time as Form A?

A. The previous provision allowing an increase for rates to be back-dated six weeks was contained in s. 44 of the Housing Repairs and Rents Act, 1954, and applied only to statutory tenancies. This section has been repealed by the Rent Act, 1957, and a rates increase of a controlled tenancy (and this expression is applicable to both a contractual and a statutory tenancy) is now governed by s. 1 (2) and s. 3 of that Act. By s. 3 the rent may be increased where the amount of rates for any rental period differs from the amount of rates for the " basic rental period." The " basic rental period " is the rental period comprising the commencement of the Act. The amount of rates payable for any rental period is to be calculated in accordance with Sched. II to the Act. By para. 2 of this Schedule as respects rental periods which precede the making of the rating authority's first demand of the rates for a rating period, the amount of rates for those periods is to be calculated as if the same rates were payable then as in the preceding rating period. For the purpose of the Act, then, the rates payable for the " basic rental period " will on the facts of the question be calculated on the amount payable for the rating year 1956–57, and consequently an increase under s. 3 of the Act can be made. However, by s. 3 (2) the date specified in such a notice from which the increase will take effect cannot be earlier than six weeks before the service of the notice, and this applies whether the tenancy is a statutory or a contractual one. If it is contractual there is the additional requirement that the date of increase must also be consistent with the terms of the contract. The principles applicable will be the same for both the weekly controlled tenancies and the monthly contractual tenancy, and in both the rates increase can only be demanded from a date six weeks prior to service of the notice.

Although on principle it would seem that there is no reason why the increase due solely to increased rates and the increase permitted under the Act should not be included in the same notice, it is felt that the better course would be to serve two notices, one on Form A to take effect three months after service, with the limit calculated by the appropriate multiple of the gross value plus the increased rates payable by the landlord, and the other on Form B to increase the rent now payable by the amount of the additional rates back-dated six weeks. Both forms may be served at the same time.

Section 12—FURNISHED HOUSES

Q. If premises, decontrolled but under £40 rateable value, are let furnished, it seems the rent tribunal will still have jurisdiction to determine a reasonable rent, without there being the equivalent of a standard rent to constitute a minimum. Yet let unfurnished, there is no maximum at all. This seems so anomalous (though admittedly there was apparently a similar position previously for furnished houses over £100 rateable value) that I wonder if I have overlooked some relevant provision?

A. By s. 12 of the Rent Act, 1957, the Furnished Houses (Rent Control) Act, 1946, no longer applies to contracts relating to dwellings of which the rateable value is such that the Rent Acts do not apply to dwelling-houses of that rateable value because of the operation of s. 11 (1) or (3). There is no reference to release from control of new furnished tenancies granted after the commencement of the Act. By s. 11 (2) the Rent Acts shall not apply to tenancies created after the commencement of the Act, but the Rent Acts, as defined by s. 49 of the Housing Repairs and Rents Act, 1954, to which reference is made by s. 25 (1) of the 1957 Act, means the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939. The 1946 Act will, therefore, continue to apply to furnished lettings of premises below the rateable value limits for decontrol

even though the letting is by a tenancy agreement coming into operation after the commencement of the Act.

Section 20—Improvement Grant

Q. John owns a semi-detached cottage let at £24 1s. 8d. per annum, on a quarterly tenancy, tenant paying rates and doing inside decorations only. The landlord does all other repairs. It is a contractual tenancy and the gross value is £18. In the middle of July, John agreed to improve the property at a cost of £391, for which he has been awarded an improvement grant of £195, and the local authority has fixed the rent at £40. This increased rent will apply from the date when the improvements are completed. Can a notice be served now to add the permitted increase under the Rent Act, 1957, from £24 1s. 8d. to £36? It would apply from the end of the next quarter, namely, Christmas.

A. In our opinion, such a notice can effectively be served. Our reasoning is: Section 1 of the Rent Act, 1957, provides for a "rent limit": by subs. (2), "the limit on the rent recoverable under a controlled tenancy for any rental period." Section 20 provides for a possible variation in the figure arrived at under s. 2. "If the conditions were *imposed* before the commencement of this Act and *then* limited the rent to an amount exceeding what would be the rent limit . . . the rent limit shall be that amount." While the words in italic produce some obscurity, we incline to the view that—this being presumably a case in which the authority performed its duty to "fix a maximum rent" under the Housing Repairs and Rents Act, 1954, s. 37 (extending provisions of Pt. II of the Housing Act, 1949)—the maximum operates from "the date specified," which is "the date on which the local authority certify that the improvement works . . . have been completed to their satisfaction." The rent limit will, therefore, be £40 when the improvements are completed, but there is nothing to prevent the ordinary provisions of s. 1, enabling the landlord to increase the rent to £36, from operating in the meantime.

Schedule I—Notice of Increase—Notice of Election

Q. We find that frequently when asked to serve notices of increase the tenancy is of a part of a house which has a single rateable value and which has not been apportioned. Now that the new Act provides that the apportionment can be agreed in writing between the landlord and the tenant we should be glad to have your views as to whether this agreement should be signed by both parties and whether you consider that an agreement in the following form will be sufficient:—

Rent Act, 1957

Property:

I hereby agree that the proportion of the rateable value of the top flat at the above premises is £ ..... or ..... (fraction) of the rateable value of the whole of the premises.

Dated this ..... day of ..... 19 ....

..... (Landlord)

..... (Tenant)

Where notice of election is being served and it is intended to increase the rent by, say, two and one-third times the gross value, can the two notices be served at the same time or must the notice of election first be served and then when one month has expired, to give time to the tenant to dissent from the election, the notice of increase served? If the latter alternative applies it either means that the landlord loses a certain amount of rent or is put to the inconvenience of serving two notices of increase, one before the notice of election is effective and one afterwards.

A. It is considered that where under the Rent Act, 1957, an apportionment can be agreed in writing between the landlord and the tenant it is desirable that there should be a single document signed by both parties, and that one in the nature of the form suggested would be sufficient. It is, however, most probably not strictly necessary that this should be so, provided there are written documents from which such an agreement can be spelt—see *Feeney* v. *Firbeck Main Collieries* [1926] 2 K.B. 218.

The position under the Act with regard to notices of election is far from clear. In view of the form of the notice given in the Rent Restriction Regulations, 1957, and the wording of s. 1 of the Act and para. 2 of Sched. I, it is considered that the notice takes effect on the date of service, and accordingly a notice of increase with the increased multiple of the gross value can be served at the same time as the notice of election. As, however, if the tenant dissents from the notice of election within one month it has the effect of making that notice void, it could also make the notice of increase invalid. It is suggested, therefore, that, in order to obviate this difficulty and save having to serve a fresh notice if the tenant dissents, two notices of increase should be served with the notice of election, one showing an increase as if the multiple of the gross value were 2 and the other showing an increase as if it were $2\frac{1}{3}$. These should be accompanied by a letter informing the tenant that the former will only be effective if he dissents from the notice of election within the month allowed, and that if he does not the latter will govern the increases in rent to be paid.

Schedule IV—Decontrol of Contractual Tenancy at Rent Exceeding Controlled Rent

Q. By an agreement of tenancy dated 19th October, 1956, the landlord, *L*, let to our client, *T*, premises at *E* for three years from 29th September, 1956, at a rent of £200 per annum, the tenant paying rates and taxes. The controlled rent at that time was £105 per annum, the landlord paying rates. The landlord was well aware of this as the correct terms had been settled in an action brought against her by a previous tenant. The landlord now claims that immediately on decontrol the full rent again became payable and the tenant liable for rates. We cannot find that this situation is adequately dealt with by Sched. IV to the Act. Paragraph 2 of that Schedule does not apply as the tenancy is not due to determine before 29th September, 1959. Paragraph 9 of Sched. IV is not applicable, but it would seem to infer that the landlord has no power to increase the rent during the contractual period if the agreement contains no provision to that effect. The question, the answer to which we cannot clearly ascertain from the Act, is whether the landlord's contention is right. If it is it would appear that the dishonest landlord who deliberately overcharges is in a better position than the honest one who charges what he knows is due. It would also follow that a tenant whose contractual tenancy has more than fifteen months to run is in a worse position than one whose tenancy is due to determine within the fifteen months.

A. Prior to decontrol the excess above the standard rent was made irrecoverable by s. 1 of the 1920 Rent Act. It has, however, been stated by the courts that there is nothing illegal in letting controlled premises at a rent in excess of the recoverable rent. All that results from so doing is that the excess becomes irrecoverable, or if paid can be recovered back by the tenant—see *Schlisseman* v. *Rubin* [1951] W.N. 530, *per* Slade, J., and *Brilliant* v. *Michaels* (1944), 114 L.J. Ch. 5, *per* Evershed, L.J. In so far as s. 1 of the 1920 Act affected the amount of rent recoverable it has been repealed, and the position is now governed by the Rent Act, 1957. Under the 1957 Act there are only provisions restricting the rent recoverable in relation to controlled tenancies and decontrolled tenancies which terminate or are terminable within fifteen months from the date of decontrol. There is nothing affecting the position of decontrolled tenancies where the contractual tenancy extends beyond that period, unless the landlord has power to increase the rent on the Rent Acts' ceasing to apply,

which is of no relevance on the present facts. The tenant is, therefore, thrown back on the terms of her lease and in view of the cases mentioned above the position is that while the tenancy has been controlled part of the rent was irrecoverable, but now on decontrol there is nothing to prevent the landlord recovering the full amount of the rent stipulated for in the agreement.

Decontrol—COMBINED RETAIL SHOP AND DWELLING-HOUSE

Q. We act for a client, who owns a retail shop and dwelling-house (outside London) let together on a quarterly tenancy. The net rateable value is £34, and the property, therefore, becomes decontrolled by virtue of s. 11 of the Rent Act, 1957. The effect of the decontrol would seem to be that the tenancy now becomes governed by Pt. II of the Landlord and Tenant Act, 1954. Does the standstill period of fifteen months apply in this case, and has the landlord to wait until 6th October, 1958, before any action can be taken regarding the tenancy, or can the landlord immediately serve a six months' notice in the prescribed form, under the Landlord and Tenant Act, 1954, terminating the tenancy, and also refusing to grant a new tenancy on the grounds specified in the Act or intimating willingness to grant a new tenancy, as the case may be?

A. By para. 2 (6) and para. 11 of Sched. IV to the 1957 Act, the transitional provisions relating to the fifteen months' standstill period do not apply to tenancies which immediately after the time of decontrol become subject to Pt. II of the Landlord and Tenant Act, 1954, because used partly for business purposes. This is whether before decontrol the tenant was a contractual or statutory tenant. Such a tenancy is, therefore, governed by the 1954 Act and not the 1957 Rent Act, and the landlord will be entitled to serve a notice under s. 25 of the 1954 Act of not more than twelve nor less than six months to expire, subject to the terms of the tenancy, at any time. There is no need to wait until the 6th October, 1958, before any action is taken.

BOOKS RECEIVED

A Commentary on The Rent Act, 1957. pp. 25. 1957. London: The Valuers' Institution. 2s. net.

Carver's Carriage of Goods by Sea. Tenth Edition. By RAOUL P. COLINVAUX, of Gray's Inn, Barrister-at-Law. pp. cxv and (with Index) 1151. 1957. London: Stevens & Sons, Ltd. £6 10s. net.

Cockle's Cases and Statutes on Evidence. Ninth Edition. By G. D. NOKES, LL.D., of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. pp. xxxi and (with Index) 512. 1957. London: Sweet & Maxwell, Ltd. £2 2s. net.

The Sale of Goods. By P. S. ATIYAH, B.A., B.C.L. (Oxon), of the Inner Temple, Barrister-at-Law. pp. xxv and (with Index) 206. 1957. London: Sir Isaac Pitman & Sons, Ltd. £1 5s. net.

Where to Look for Your Law. Twelfth Edition. By C. W. RINGROSE. pp. vii and 190. 1957. London: Sweet & Maxwell, Ltd. 7s. 6d. net. (Interleaved copy: 15s. net.)

Kime's International Law Directory for 1957. Sixty-fifth Edition. Edited and compiled by PHILIP W. T. KIME. pp. xiv and (with Index) 526. 1957. London: Kime's International Law Directory, Ltd. 15s. net.

Trials of Timothy John Evans and John Reginald Halliday Christie. Edited by F. TENNYSON JESSE. pp. c and 379. 1957. London: William Hodge & Co., Ltd. £1 10s. net.

A Difference in Death. By DON RUSSELL. pp. 191. 1957. London: Faber & Faber, Ltd. 12s. 6d. net.

English Civil Law. By ARTHUR HEREWARD ORMEROD. pp. 46. 1957. London: Longmans, Green & Co. 2s. 6d. net.

"THE SOLICITORS' JOURNAL," 1st AUGUST, 1857

ON the 1st August, 1857, THE SOLICITORS' JOURNAL contained a report of the Mayo Assizes: "One of the incidents connected with the Mayo election petition . . . was the ill-treatment received by Mr. John Gannon, one of the witnesses, on his return to Mayo after having given evidence before the committee. Some of the persons concerned in the outrage were immediately tried on a charge of riot and assault and were found guilty. In delivering sentence the presiding judge (Richards, B.) read a severe lecture on the barbarity that had been exhibited towards a person who had merely discharged a public duty by giving evidence, and sentenced one of the prisoners to one year's imprisonment with hard labour, and another (who was the ringleader on the occasion) to two years with hard labour. Immediately afterwards, his lordship sentenced four other prisoners to three months' imprisonment for having carried away against their will two persons who were voters in the County of Mayo, and having detained them until the election was over. An Act of Parliament (he said) recently passed . . . met this case . . . and the excuse urged on behalf of the prisoners, that this was done in the heat and excitement of a contested election, was no excuse; for if this were done an election . . . would represent merely the physical force of the dominant party."

DEVELOPMENT PLAN

COUNTY BOROUGH OF SOUTHAMPTON DEVELOPMENT PLAN

Comprehensive Development Area No. 3—Central Area

The above development plan was on 9th July, 1957, submitted to the Minister of Housing and Local Government for approval. This plan relates to land situate within the Comprehensive Development Area No. 3, being the Central Area of the County Borough of Southampton. A certified copy of this plan, as submitted for approval, has been deposited for public inspection at Room 329 in the Borough Architect's Department at the Civic Centre, Southampton, and is there available for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on weekdays, except Saturday, when it may be inspected between the hours of 9 a.m. and noon. Any objection or representation with reference to this plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st August, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Southampton County Borough Council and will then be entitled to receive notice of the eventual approval of this plan.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

BILL OF LADING: GOODS "SHIPPED IN APPARENT GOOD ORDER AND CONDITION": STATEMENT FALSE TO KNOWLEDGE OF SHIPOWNER: INDEMNITY TAKEN: WHETHER ENFORCEABLE

Brown Jenkinson & Co., Ltd. *v.* Percy Dalton (London), Ltd.

Lord Evershed, M.R., Morris and Pearce, L.JJ.
3rd July, 1957

Appeal from Judge Block sitting at the Mayor's and City of London Court.

The defendants had a quantity of orange juice which they wished to ship to Hamburg. The plaintiffs, as agents of the owners of the vessel on which the orange juice was to be shipped, informed the defendants that the barrels containing the orange juice were old and frail and that some were leaking and that a claused bill of lading should be granted. The defendants required a clean bill of lading and the shipowners, at the defendants' request and on a promise that the defendants would give to them an indemnity, signed bills of lading stating that the barrels were "shipped in apparent good order and condition." The defendants, pursuant to their promise, entered into an indemnity whereby they undertook unconditionally to indemnify the master and the owners of the vessel against all losses which might arise from the issue of clean bills of lading in respect of the goods. The barrels when delivered at Hamburg were leaking and the shipowners had to make good the loss. The plaintiffs sued the defendants under the indemnity, the benefit of which had been assigned to them. The defendants refused to pay, alleging that the contract of indemnity was illegal because it had as its object the making by the shipowners of a fraudulent misrepresentation. It was found that the shipowners did not desire or intend that anyone should be defrauded. It appeared from the evidence that the granting of clean bills of lading against indemnities was a common practice. Judgment was given for the plaintiffs. The defendants appealed. *Cur. adv. vult.*

MORRIS, L.J., said that the question which was raised in this appeal was whether on the facts of this particular case an agreement to indemnify against the consequences of issuing a clean bill of lading was enforceable. The case was one in which the issuing of a clean bill of lading was not justified having regard to the condition of the goods which were shipped. It was, he thought, clear that the plaintiffs did not desire that anyone should be defrauded. In agreeing with the defendants, they did not have any such desire as their real purpose. But the question which here arose was whether the contract sued upon was founded upon an illegal consideration. An agreement was illegal and unenforceable if it had as its object the commission of a tort. It was said that the contract here was illegal because it had as its object the making by the shipowners of a fraudulent misrepresentation. The question arose whether this was so: if so, the further question arose whether the position was affected by the circumstance that the claims made upon the shipowners were satisfied. The first question which arose was whether, when the clean bill was issued, it contained a representation. In his (his lordship's) judgment, it clearly did. The bill of lading recorded that the 100 barrels were shipped "in apparent good order and condition." The barrels were manifestly in bad order and they were leaking. There being a representation, it seemed to him that the representation was certainly shown to be false. It was further shown that it was false to the knowledge of the shipowners through those who were acting on their behalf. The next question which arose was whether the false representation was made by the shipowners with the intention that it should be relied upon. His lordship reviewed the facts and said that the position was that, at the request of the defendants, the plaintiffs made a representation which they knew to be false and which they intended should be relied on by persons who received the bill of lading, including any banker who might be concerned. In these circumstances, all the elements of the tort of deceit were present. Someone who could prove that he suffered damage by relying on the representation could sue for damages. He (his lordship) felt impelled to the conclusion that a promise to indemnify the plaintiffs against any loss resulting to them from making the representation was unenforceable. The claim could not be put forward without basing it upon an unlawful transaction. The conduct of the defendants did not merit that they should have relief from the claim now made. But issues were raised which were of more consequence than the result of the present action. He would allow the appeal.

PEARCE, L.J., delivered a concurring judgment.

LORD EVERSHED, M.R., dissenting, said that in his judgment the case was not one which required the court upon grounds of public policy to deny to the plaintiffs their right to sue. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *T. G. Roche*, Q.C., and *T. M. Eastham* (*William A. Crump & Son*); *Eustace Roskill*, Q.C., and *B. J. Brooke-Smith* (*Carters*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law.] [3 W.L.R. 403

CATERING WAGES ACT, 1943: WORKER RESTRICTED TO CATERING PREMISES FOR 93 HOURS WEEKLY: ACTIVE DUTIES NOT EXCEEDING 47 HOURS WEEKLY: NO ENTITLEMENT TO STATUTORY REMUNERATION FOR OVERTIME AND SPECIAL TIME

English *v.* Gunter & Co., Ltd.

Hodson, Parker and Ormerod, L.JJ.
8th July, 1957

Appeal from Stable, J.

A worker who was employed at an unlicensed place of refreshment was required by the terms of his contract to remain on the premises for ninety-three hours weekly from 7 p.m. until 8 a.m. on weekdays, and until 10 a.m. on Sundays. His active duties, which were not directly concerned with the supply of food or drink, occupied some three hours each night, after which he could sleep or do as he chose, subject only to the restriction on his movements. He received wages in excess of the statutory minimum for the normal forty-seven hour working week as laid down by regulations made from time to time under the Catering Wages Act, 1943. He claimed in these proceedings a declaration that his employment was subject to the Act of 1943 and the regulations made thereunder, and that he was entitled to the statutory minimum remuneration laid down in the Wages Regulation (Unlicensed Place of Refreshment) Order, 1949, as amended, and for arrears of wages, including overtime and special time, due to him thereunder. Stable, J., gave judgment for the defendants and the plaintiff appealed.

HODSON, L.J., said that the plaintiff was clearly a "worker" within the scope of s. 1 (2) of the Act, and within the scope of para. 24 (1) (*g*) of the regulation of 1949 as being employed on work for the purposes of activities carried on at an unlicensed place of refreshment. But his claim failed, because though he was required to remain on the premises for ninety-three hours weekly, it could not be said that he was for the purposes of this Act or these regulations entitled to be paid for the time when he was doing no work at all. A man might as a term of his employment be required to be at certain hours within a particular radius so that he might be called for duty if required. But it did not necessarily follow that he was within the scope of regulations such as these, and accordingly entitled to be paid for those hours of restriction as if they were hours of work. The appeal should be dismissed.

PARKER, L.J., concurring, said that the hours for which a servant was employed must depend on the exact terms of the contract of employment. Difficulty arose where a man was employed to do definite jobs but a restriction was placed on him so that when the jobs were done he was not his own master. In such cases it must be a question of degree, and therefore of fact, as to whether a contract was not then one for a definite number of hours. In the present case, Stable, J., had rightly drawn the

inference that the plaintiff was not employed to work for ninety-three hours a week, but to do definite jobs, merely submitting to a restriction on his movements. His lordship was gratified that such an inference could be drawn, for it seemed absurd on its face that a man who was allowed to sleep should during his sleeping hours not only earn overtime but special time as well.

ORMEROD, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *J. E. Arlro-Morris* (*Kearton & Co.*); *R. I. Threlfall* (*Lawrance, Messer & Co.*).

[Reported by Miss M M. HILL, Barrister-at-Law] [1 W.L.R. 951

Chancery Division

TOWN AND COUNTRY PLANNING: LAND HELD ON TRUST FOR SALE: COMPENSATION: VARIATION OF TRUST

***In re* Meux, decd.; Gilmour *v.* Gilmour**

Wynn Parry, J. 6th June, 1957

Adjourned summons.

The testator by his will, after appointing trustees of the will, of whom the plaintiff was one, gave his residuary realty and personalty to his trustees on trust for sale and settled the residuary trust fund on certain trusts. The income of the fund was now payable to the plaintiff in these proceedings during his life with remainder to his first and other sons successively in tail male, with remainder to his sister in tail male, with remainders over. The plaintiff had three sons, all of whom were infants. As a result of certain parts of the unsold realty being designated as land to be used for agricultural purposes, compensation moneys had been received from the Central Land Board by the trustees under Pt. I of the Town and Country Planning Act, 1954, and other payments were expected to be made under Pts. II and V of that Act. On a summons taken out by the plaintiff, Wynn Parry, J., held that the principal amount of the compensation paid under Pt. I and receivable under Pts. II and V of the Act of 1954 ought to be treated as capital of the residuary estate. The question then arose whether those moneys were applicable under s. 28 (1) of the Law of Property Act, 1925, in the same manner as if they represented proceeds of sale arising under the trust for sale contained in the will, regard being had to s. 66 of the Act of 1954, and reg. 10 of the Town and Country Planning (Mortgages, Rentcharges, etc.) Regulations, 1955. The plaintiff also applied for an order under s. 53 of the Trustee Act, 1925, that a person be appointed to convey to the plaintiff his eldest son's entailed interest, with the consent of the plaintiff as protector, in consideration of a proper purchase price to the intent that that purchase price should be applied for the son's benefit by paying it to the trustees of a settlement to be created for that purpose.

WYNN PARRY, J., said that if s. 66 of the Act of 1954 was applied as it stood, the destination of any compensation money was certain, because the regulations of 1955 provided for this by reg. 10. The compensation money, when received by the trustees, would be held by them on the relevant trusts declared by the will, though it would not be deemed to be proceeds of sale. It was true that moneys received by the trustees as compensation money were received by them, although they parted with no land; but this payment was clearly referable to the land; it was paid because the land was regarded as having suffered a depreciation; but whether or not compensation moneys were to be regarded as proceeds of sale was a matter of policy with which the court was not concerned. The legislature could, of course, deal with the question if so minded, and so could the Minister by appropriate regulations; but as matters stood, it was not open to the court to treat the compensation in question in the hands of the trustees of the will as " proceeds of sale " for the purposes of s. 28 of the Law of Property Act, 1925. As to the second question, the case was distinguishable from *In re Heyworth's Contingent Reversionary Interest* [1956] Ch. 364, and the court would make the order asked for since it had jurisdiction to do so and because the transaction should be treated as a single transaction amounting to an application for the benefit of the infant within the meaning of s. 53 of the Trustee Act, 1925. Declaration and order accordingly.

APPEARANCES: *Geoffrey Cross*, Q.C., and *J. A. Brightman* (*Neish, Howell & Haldane*); *S. W. Templeman* and *E. I. Goulding* (*Speechly, Mumford & Craig*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 377

WILL: ACCELERATION: DISCLAIMER OF INTEREST: WILL AND CODICIL: WHETHER LEGACIES CUMULATIVE

***In re* Davies; Davies *v.* Mackintosh**

Vaisey, J. 12th July, 1957

Adjourned summons.

A testatrix by her will, dated 13th November, 1939, after bequeathing (*inter alia*) a legacy of £350 to D. J. Williams, gave and bequeathed her residuary estate equally between her two sons and her stepdaughter, Mrs. Primrose Marshall, and directed that the " portion " of the stepdaughter should be " hers for life and then to be divided equally between her issue." By a codicil dated 10th December, 1954, the testatrix bequeathed to Williams £1,000 " thus increasing the sum of £350 as mentioned in my will in appreciation of his valuable services and advice over a period of twenty years." The testatrix died in 1955. The stepdaughter, who married once, was now a widow aged fifty-eight years; she had three children issue of the marriage, none of whom, at the date of the commencement of these proceedings, had had any issue. By a deed, dated 5th October, 1956, she wholly, absolutely and irrevocably disclaimed all the life or other interest purported to have been conferred on her by the will. The executors took out the present summons to have determined: (1) the destination of the one-third share of the residuary estate bequeathed to Mrs. Marshall having regard to the deed of disclaimer executed by her; (2) whether the sum of £1,000 bequeathed to D. J. Williams by the codicil was payable in addition to or in substitution for the £350 given by the will.

VAISEY, J., said the second question could be dealt with quite briefly; the rule was that legacies given by different instruments were *prima facie* cumulative. He found nothing to displace that presumption, and he would declare that the defendant, D. J. Williams, was entitled to both the legacies. Turning to the main question, he thought that the word " then " in the expression " then to be divided " was equivalent to " at her death " or " after her death " or perhaps " subject to her life interest." But for the disclaimer, the funds would at the death of Mrs. Mackintosh have been divisible in equal shares between a class of persons comprising all her descendants of whatever degree (children and remoter issue) who had been in existence at any time between the death of the testatrix and the death of Mrs. Mackintosh. Each such person's interest would be an absolute vested interest, so that the class might include not only persons living at the death of Mrs. Mackintosh but also the legal personal representatives of persons who had predeceased her. At present the class consisted only of the three children of Mrs. Mackintosh. One view was that the principle of acceleration now fell to be so applied as to give the fund to those three children to the total and final exclusion of all the other at present non-existent members of the class, that was to say, Mrs. Mackintosh's grandchildren and remoter issue. It seemed rather surprising that the purely gratuitous act (i.e., the disclaimer) should operate to deprive and disposses a number of other beneficiaries, namely, her grandchildren and remoter issue, of the interest which the testatrix had given them by her will. It was clear, however, that acceleration might and did sometimes alter the constitution of a class of beneficiaries from what it would have been if the gift had not been accelerated: see *In re Johnson* (1893), 68 L.T. 20. His lordship referred to two other views and said that on the whole he was in favour of the first, which treated the class of Mrs. Mackintosh's issue as now finally closed, this view being supported by *Jull* v. *Jacobs* (1876), 3 Ch. D. 703. He would declare that the fund now belonged to the three children of Mrs. Mackintosh in equal shares absolutely, and also that Mr. Williams was entitled to both his legacies. Declarations accordingly.

APPEARANCES: *E. I. Goulding* (*Theodore Goddard & Co.*, for *D. W. Peter Williams & Co.*, Swansea); *J. L. Knox* (*Farrer & Co.*); *H. E. Francis* (*Walker, Martineau & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 922

Queen's Bench Division

TOWN AND COUNTRY PLANNING: ENFORCEMENT NOTICE: PROSECUTION

Norris *v.* Edmonton Corporation

Lord Goddard, C.J., Slade and Gorman, JJ. 9th July, 1957

Case stated by Middlesex justices.

The appellant, who was the occupier of land used for car breaking, car repairs and the sale of cars, was served by the respondents with an enforcement notice pursuant to ss. 23 and 24 of the Town and Country Planning Act, 1947, alleging that the land had been developed by such user, and requiring the appellant to discontinue that use and to restore the land to its previous condition of a domestic yard to a dwelling-house. The appellant did not appeal against the notice under s. 23 (4) of the Act, but continued the existing use, and the respondents preferred an information against him alleging default in complying with the notice. At the hearing of the summons the justices refused to admit evidence of the user of the yard prior to the appellant's occupation which the appellant wished to call to prove that his use of the land did not constitute development within the meaning of the Act, and they found him guilty of the charge alleged.

LORD GODDARD, C.J., said that counsel for the appellant submitted that as he wanted to raise the question that there had been no development because the appellant was only using the land in the same way that it had been used by his predecessor, that was a point which could not be dealt with by the justices by way of appeal. He relied on *Keats* v. *London County Council* [1954] 1 W.L.R. 1357, in which the Divisional Court decided that on an appeal to a court of summary jurisdiction under s. 23 the court of summary jurisdiction must assume that the development has taken place. That case seemed to be inconsistent with *East Riding County Council* v. *Park Estate* (*Bridlington*), *Ltd.* [1957] A.C. 223, in which the House of Lords decided that any objection, other than an objection on the ground that the notice was a nullity as not complying with the provisions of the Act, that could be taken to the notice is one which the justices have power to entertain. Whether the appellant desired to say that the development was not development at all or that it was not a development to which the Act applied, the House of Lords had said that that was a matter which the justices could deal with on an appeal. The next question was whether this point could be raised afterwards when the man was prosecuted for not complying with the notice, or was the prevention which was put on his raising the point only applicable if he was sued for the expenses of the local authority in carrying out the removal or remedying the development which was said to have taken place? That point had been decided by the court in terms in *Perrins* v. *Perrins* [1951] 2 K.B. 414, where it was decided that if the matter was one which could be taken to appeal under s. 23, a person could not raise that point as a defence if he was prosecuted for disobeying the notice. With regard to *Keats'* case, it was irreconcilable with the *East Riding County Council* case, and, in effect, although their lordships did not refer to *Keats'* case in their speeches, it must be taken to be overruled by it. Although the law did not allow an appeal from the Divisional Court in a criminal cause or matter, it was to be hoped that some opportunity might be taken to try to clear up by legislation the obscure position which arose under the Act. As it was, the justices came to a right decision and the appeal must be dismissed.

SLADE, J., delivered a concurring judgment.

GORMAN, J., agreed. Appeal dismissed.

APPEARANCES: *D. G. Widdicombe* (*C. Grobel, Son & Co.*); *D. J. Turner-Samuels* (*Town Clerk, Edmonton*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 388**

NATIONAL INSURANCE CONTRIBUTIONS: WHETHER UNPAID CONTRIBUTIONS ORDERED TO BE PAID AFTER CONVICTION "RECOVERABLE AS A PENALTY"

R. *v.* Marlow (Bucks) Justices, *ex parte* Schiller

Lord Goddard, C.J., Byrne and Devlin, JJ. 10th July, 1957

Application for an order of certiorari.

The applicant pleaded guilty to an information laid against him under the National Insurance Act, 1948, alleging that he had failed to pay an insurance contribution due from him. He was fined £4 and ordered to pay costs, and further ordered under reg. 19 of the National Insurance (Contributions) Regulations, 1948, to pay £38 arrears of national insurance contributions due from him. He failed to comply with the order and, on his being brought before them by way of summons, the justices committed him to prison for three months for non-payment of the fines and the arrears of contributions. The applicant sought an order of certiorari to quash the committal order on the ground that, inasmuch as the £38 arrears of national insurance contributions was enforceable only as a civil debt, the order was bad in law. Section 8 (1) of the National Insurance Act, 1946, provides: "Regulations may provide . . . (*e*) (without prejudice to any other remedy) for the recovery, on prosecutions brought under or by virtue of this Act, of contributions under this Act." By s. 54 (1), contributions "shall be recoverable as debts due to the Crown, and without prejudice to any other remedy may be recovered by the Minister as a civil debt." Regulation 19 of the National Insurance (Contributions) Regulations, 1948, provides that on conviction of failing to pay a contribution the offender shall be liable to pay, in addition to the sum for which he was convicted, a sum equal to any other contributions which he has failed to pay, and that "(5) Any sum ordered to be paid . . . under this regulation shall be recoverable as a penalty." By the Magistrates' Courts Act, 1952, s. 64, where default is made in paying a sum adjudged to be paid by a conviction or order of a magistrates' court, the maximum period for which a person may be committed to prison shall not exceed, by para. 1 of Sched. III, for an amount exceeding £20—three months, and, by para. 4: "The maximum period applicable to a sum of any amount enforceable as a civil debt shall be six weeks."

DEVLIN, J., reading the judgment of the court, said that the point was whether the £38 payable under reg. 19 was a sum "enforceable as a civil debt" within the meaning of para. 4 of Sched. III to the Magistrates' Courts Act, 1952. If it was, it was conceded that the committal order was bad. The court was not concerned with the essential character of the sum but with the mode of its enforcement or recovery. The combined effect of s. 54 (1) and reg. 19 (5) was that the sum could be recovered either as a civil debt or as a penalty. But once its recovery as a penalty had been ordered, the sum could no longer be described as "enforceable as a civil debt" within the meaning of para. 4. It was understandable that the applicant should take the further point that reg. 19 (5) was *ultra vires* s. 8 of the Act. That section said in substance that regulations might provide for the recovery of contributions on prosecution brought under the Act. Was that wide enough to authorise recovery as a penalty? That form of recovery of contribution was not new, and the substance of reg. 19 had been enacted in all Insurance Acts since 1925. Since the Act itself provided for recovery as a civil debt, it was difficult to see what could be meant by recovery on prosecution except as a penalty and difficult to suppose that it was intended to abandon that well-established remedy. The motion failed.

On an application being made on behalf of the justices for costs, LORD GODDARD, C.J., said that, unless some attack was made on them as having acted improperly on the ground of bias or having misconducted themselves, justices should not appear by counsel in matters of prerogative writs but should avail themselves of the provisions of the Review of Justices' Decisions Act, 1872. The applicant would only have to pay one set of costs and the justices and the Minister must settle between themselves as to who was to have them. Application dismissed. Order for costs accordingly.

APPEARANCES: *D. Kemp* (*Giffen, Couch & Gilmore*); *Rodger Winn* (*Solicitor, Ministry of Pensions and National Insurance*); *J. M. Milne* (*Preston, Lane-Claypon & O'Kelly*, for *Reynolds, Parry-Jones & Crawford*, High Wycombe).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 399**

Probate, Divorce and Admiralty Division

LEGAL AID: SUMMONS FOR REVIEW OF TAXATION OF COUNSEL'S FEES IN NAME OF ASSISTED PERSON: JURISDICTION

Hammond *v.* Hammond

Karminski, J. 12th July, 1957

Application for review of taxation.

On 11th June, 1956, the petitioner, the applicant in the summons, was granted a decree *nisi* of dissolution, together with

an order for party and party costs, against the respondent and a further order for the taxation of the costs as between solicitor and client under the Third Schedule to the Legal Aid and Advice Act, 1949. The respondent was not at the date of the summons, and never had been, an assisted person under that Act. The petitioner's costs were duly taxed; reasons for objections to the taxation which related wholly to the fees allowed to counsel were lodged thereafter, and were answered by the registrar. The application asked that the matter might be referred back to the registrar with a direction to vary his certificate and that the respondent be ordered to pay the costs of this application.

KARMINSKI, J., said that since the application appeared to raise matters of some general interest under the Legal Aid and Advice Act, 1949, it had been adjourned into open court for argument. Two points arose for consideration: first, could the court entertain an application of this kind when it was brought in the name of an assisted party who had no interest in it, but was in fact brought solely for the benefit of the party's legal advisers? Secondly, if that question could be answered affirmatively, were there grounds on which the court should vary the order of the registrar? It was conceded that in the present case the petitioner could neither suffer nor benefit from any variation of the order made on taxation. The small contribution which she was ordered to make by the legal aid committee had been paid and could not be increased. If the present application succeeded and the fees to counsel payable under the party and party taxation were increased, they would fall on the respondent who was not an assisted person. If the fees were increased on the solicitor and client taxation, the increase would fall on the legal aid fund, which was not represented before him. But the petitioner, the nominal applicant in the present summons, had no interest in (and perhaps no knowledge of) the proceedings; certainly she could be in no way adversely affected by any variation in the costs allowed on taxation. There had been a number of cases in the Divorce Division which had been decided since the Legal Aid and Advice Act, 1949, in which the remuneration of solicitors and counsel had been investigated. In none of these cases was the power of the court to hear the applications discussed. It was not doubted in the Divorce Division that the court had power to hear an application to review taxation in a legal aid case. But the decision of Devlin, J., in *Rolph* v. *Marston Valley Brick Co., Ltd.* [1956] 2 Q.B. 18 raised the question of the court's powers. In that case an application was made for a review of taxation, but this was refused by Devlin, J., on the ground that the taxing master had made no error of principle. Application was then made for an order to tax the costs of the summons under reg. 18 (3) (*b*) of the Legal Aid (General) Regulations, 1950, but Devlin, J., held that he had no power to order such a taxation, on the grounds that the summons was interlocutory, and not a final order, and also because the proceedings were not proceedings to which the assisted person was a party. No application was made in the present case to tax the costs of the summons, nor had the petitioner sought or obtained leave from the legal aid committee to bring the summons. The point decided by Devlin, J., did not therefore arise. Without expressly deciding the point, Devlin, J., thought that he ought to have dismissed the summons at the outset on the ground that the solicitor could not have had authority from the assisted person to bring the summons, and he pointed out that the solicitor would be seeking to obtain money from her estate partly for his own benefit. Devlin, J., added that when the court became aware that a solicitor was acting without authority, the court should act of its own motion and refuse to grant relief. He (his lordship) was not bound by the observations of Devlin, J., since they were not directly concerned with the issue which he had to decide. But he had come to the conclusion that his reasoning was unanswerable and should be followed. The fact that in the present case the petitioner's financial interests were unaffected did not affect the principle. He had therefore come to the conclusion that the court had no power to deal with the present application and it must be dismissed. The result was not wholly satisfactory, since the present legal aid regulations appeared to preclude both the legal aid fund and the solicitors or counsel to the parties from questioning a taxation, but it might be in the interests of the working of the Legal Aid and Advice Act, 1949, that both the fund and the legal advisers to the parties should be entitled to be heard. As to the taxation the registrar took the relevant factors into account and did not err in any way. Summons dismissed.

APPEARANCES: *Joseph Jackson* and *J. C. J. Tatham* (*W. Timothy Donovan*); *D. Walsh* (*Coleman & Co.*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[3 W.L.R. 395**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Federation of Malaya Independence Bill [H.C.] [22nd July.
Finance Bill [H.C.] [22nd July.

Read Third Time:—

Agriculture Bill [H.C.] [22nd July.
Army (Conditions of Enlistment) Bill [H.C.] [22nd July.
Barry Corporation Bill [H.C.] [24th July.
British Transport Commission Bill [H.C.] [25th July.
Clyde Navigation Order Confirmation (No. 2) Bill [H.C.] [24th July.
Coal-Mining Subsidence Bill [H.C.] [25th July.
Dartford Tunnel Bill [H.C.] [25th July.
Doncaster Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [25th July.
Greenock Port and Harbours Order Confirmation Bill [H.C.] [23rd July.
Ministry of Housing and Local Government Provisional Order (County of Berks (Consent to Letting)) Bill [H.C.] [25th July.
Reading Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [25th July.
Registration of Births, Deaths and Marriages (Special Provisions) Bill [H.C.] (formerly Registration of Births, Deaths and Marriages (Navy, Marines and Service Civilians) (Overseas) Bill) [22nd July.
Tanganyika Agricultural Corporation Bill [H.C.] [23rd July.
Winfrith Heath Bill [H.C.] [25th July.
Workington Harbour and Dock (Transfer) Bill [H.C.] [24th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Consolidated Fund (Appropriation) Bill [H.C.] [25th July.

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and fifty-eight, and to appropriate the supplies granted in this Session of Parliament.

Read Second Time:—

Governors' Pensions Bill [H.L.] [26th July.

Read Third Time:—

Affiliation Proceedings Bill [H.L.] [26th July.
East Ham Corporation Bill [H.L.] [25th July.
Esso Petroleum Company Bill [H.L.] [25th July.
Hastings Tramways Bill [H.L.] [25th July.
Housing Bill [H.L.] [26th July.

B. QUESTIONS

RESTRICTIVE PRACTICES COURT

The ATTORNEY-GENERAL stated that proceedings had been started in twenty cases. The work involved in preparing them for trial was considerable, and it was very unlikely that any of

them would be ready for final hearing before the early part of next year.

[23rd July.

HOUSE OF LORDS (APPEALS)

The HOME SECRETARY said that the present method of giving authority for leave to appeal to the House of Lords from the Court of Criminal Appeal had been fully debated in Committee in 1948 when an amendment to the Criminal Justice Bill proposing a change in the law had been rejected. He could not think those arguments had any less force to-day.

[25th July.

STATUTORY INSTRUMENTS

County of Northampton (New Streets) Order, 1957. (S.I. 1957 No. 1266.)

Exported Cattle Protection (Amendment) Order, 1957. (S.I. 1957 No. 1254.) 5d.

Housing (Payments for Well-Maintained Houses) (Scotland) Order, 1957. 5d.

Kingston upon Hull Corporation Water Order, 1957. (S.I. 1957 No. 1264.) 5d.

London–Penzance Trunk Road (Staines By-Pass) Order, 1957. (S.I. 1957 No. 1255.) 5d.

Money Order Amendment (No. 5) Warrant, 1957. (S.I. 1957 No. 1289.) 5d.

National Gallery (Lending outside the United Kingdom) (No. 2) Order, 1957. (S.I. 1957 No. 1267.)

Nurses Regulations, 1957. (S.I. 1957 No. 1257.) 5d.

Prohibition of Landing of Animals, Carcases and Animal Products, and Hay and Straw from the Channel Islands (Revocation No. 2) Order, 1957. (S.I. 1957 No. 1272.) 5d.

Retention of Cable and Pipes under Highway (County of Buckingham) (No. 2) Order, 1957. (S.I. 1957 No. 1242.) 5d.

Safeguarding of Industries (List of Dutiable Goods) (Amendment No. 13) Order, 1957. (S.I. 1957 No. 1215.) 5d.

Stopping up of Highways (County of Bedford) (No. 6) Order, 1957. (S.I. 1957 No. 1248.) 5d.

Stopping up of Highways (County of Berks) (No. 9) Order, 1957. (S.I. 1957 No. 1249.) 5d.

Stopping up of Highways (County of Berks) (No. 10) Order, 1957. (S.I. 1957 No. 1251.) 5d.

Stopping up of Highways (City and County Borough of Bradford) (No. 3) Order, 1957. (S.I. 1957 No. 1258.) 5d.

Stopping up of Highways (County of Chester) (No. 11) Order, 1957. (S.I. 1957 No. 1250.) 5d.

Stopping up of Highways (City and County Borough of Coventry) (No. 5) Order, 1957. (S.I. 1957 No. 1241.) 5d.

Stopping up of Highways (County of Essex) (No. 17) Order, 1957. (S.I. 1957 No. 1259.) 5d.

Stopping up of Highways (County of Hertford) (No. 9) Order, 1957. (S.I. 1957 No. 1240.) 5d.

Stopping up of Highways (County of Lancaster) (No. 19) Order, 1957. (S.I. 1957 No. 1252.) 5d.

Stopping up of Highways (City and County Borough of Leeds) (No. 6) Order, 1957. (S.I. 1957 No. 1256.) 5d.

Stopping up of Highways (County of Leicester) (No. 12) Order, 1957. (S.I. 1957 No. 1253.) 5d.

Stopping up of Highways (County of Oxford) (No. 4) Order, 1957. (S.I. 1957 No. 1239.) 5d.

Telephone Amendment (No. 3) Regulations, 1957. (S.I. 1957 No. 1260.) 10d.

Wages Regulation (Flax and Hemp) Order, 1957. (S.I. 1957 No. 1261.) 8d.

Wages Regulation (Licensed Non-residential Establishment) (Amendment) Order, 1957. (S.I. 1957 No. 1262.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

The Queen has approved the appointment of Mr. F. E. FIELD, Solicitor-General, Barbados, to be a Puisne Judge in that territory.

Sir LANCELOT JOYNSON-HICKS, M.P., solicitor, has succeeded Lord Teynham as chairman of the Automobile Association.

Mr. IAN STUART MANSON, assistant prosecuting solicitor for Bradford Corporation, has been appointed prosecuting solicitor at Southampton on the resignation of Mr. G. M. Nightingale.

Miscellaneous

The Performing Right Tribunal, set up under the Copyright Act, 1956, s. 23, have now taken occupation at Someries House, Regents Park, London, N.W.1 (telephone Welbeck 1358–9). Communications for the tribunal should be addressed to the secretary.

At The Law Society's Preliminary Examination, held from 1st to 4th July, ten of the twenty-five candidates were successful.

OBITUARY

MR. J. R. H. BAKER

Mr. John Roderick Horton Baker, solicitor, of Steelhouse Lane, Birmingham, has died at the age of 49. Admitted in 1930, he was a member of Warwickshire County Council and was Mayor of Stratford-upon-Avon from 1942 to 1944.

MR. A. F. BRYANT

Mr. Archibald Festing Bryant, solicitor, of Hertford, died on 8th July, aged 83. He was admitted in 1900.

MR. W. E. RAINE

Mr. William Edward Raine, solicitor, of Sunderland, has died at the age of 82. He was admitted in 1901 and was president of Sunderland Law Society in 1938. He was clerk to the Wear Fishery Board for twenty-five years.

MR. G. H. S. ROBERTS

Mr. Gwilym Henry Spooner Roberts, solicitor, of Llangefni, died on 16th July, aged 50. He was admitted in 1934.

PRACTICE DIRECTION

RESTRICTIVE PRACTICES COURT

By virtue of the power conferred upon me by Rule 49 of the Restrictive Practices Court Rules, 1957, I hereby give the following general direction:—

All applications in England and Wales for representation orders that the members of a trade association shall be represented by the association shall until further order be dealt with by the Clerk of the Court who may at his discretion either dispose of the same or adjourn them to the Judge.

PATRICK DEVLIN,
President.

18*th July*, 1957.

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